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MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States
OCTOBER TERM, 1979

No. 79-554

ALPINE INVESTMENTS, INC.,
Petitioner
v.
VETA PEARL BARTON and SUN OIL COMPANY,
Respondents

**REPLY TO RESPONDENTS' BRIEF
IN OPPOSITION TO ISSUANCE OF
A WRIT OF CERTIORARI**

William J. Legg
- of -
Andrews Davis Legg Bixler
Milsten & Murrah, Inc.
1600 Midland Center
Oklahoma City, OK 73102
(405) 272-9241

Counsel for Petitioner

Holland Meacham
- of -
Royse and Meacham
119 South Jefferson
Elk City, OK 73644
(405) 225-2220
Of Counsel

December, 1979

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Respondents attack Alpine's Petition for a Writ of Certiorari by asserting:

1. No federal issue was raised in the state proceedings.
2. The case was decided upon independent adequate state grounds.

In fact, the constitutional issue was raised timely, adequately, and consistently throughout the proceedings from the very first pleading in the trial court to the very last brief in the Oklahoma Supreme Court. (Petition for Writ of Certiorari p. 3-4). Alpine's

Brief before the Oklahoma Supreme Court addressed the issue directly and extensively.

The state courts in this case turned their decisions upon state grounds by reference to local procedural rules thereby avoiding Alpine's issues regarding due process. All of the many Oklahoma decisions cited by Respondents create those very rules. However, this Court has long seen through judicial maneuvering of this nature and kept federal rights safe from denial by twists of local law. Supremacy requires this. The Constitution assures it.

The crux issue here is whether finality of judgments is an adequate state interest to justify denial of constitutional due process, or even inquiry into denial of due process. In the proper order of things, notice and opportunity to be heard must precede finality which is too drastic to be accorded automatically and without inquiry. Otherwise, one might rely upon finality to protect a position obtained by a prior deprivation of constitutional rights. One who is due notice and opportunity to be heard is constantly in danger of suffering loss for failure to take actions that, by reason of the very lack of due process, he did not know were needed.

Notice and opportunity to be heard are so fundamental that denial under any guise, finality or otherwise, must not be allowed.

This case, where Union was readily locatable by reference to the very deed reformed against it by publication-based default judgment, and where Union naturally remained unaware of the default judgment, is an example of the injustice fostered by placing finality ahead of due process or the right to inquire into due process. It is a plain example of why finality should cut off rights only after the fundamental and basic right to notice is satisfied. The right to notice

and an opportunity for a hearing before deprivation of property entitles a person to more than requiring that an unknown adversary assemble and file certain papers and then merely escape detection for three years.

CONCLUSION

For these substantial constitutional reasons, a writ of certiorari should issue to review the judgment and opinion of the Oklahoma Supreme Court.

Respectfully submitted,

William J. Legg

- of -

Andrews Davis Legg Bixler

Milsten & Murrah, Inc.

1600 Midland Center

Oklahoma City, OK 73102

(405) 272-9241

Counsel for Petitioner

Holland Meacham

- of -

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